



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/895,936	07/17/97	WISNIEWSKI R	17882706

PAUL DAVIS
WILSON SONSINI GOODRICH AND ROSATI
650 PAGE MILL ROAD
PALO ALTO CA 94304

QM02/0705

EXAMINER
FORD, J

ART UNIT	PAPER NUMBER
3743	18

DATE MAILED: 07/05/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

see attached

Art Unit: 3743

Newly submitted claims 36-68 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: original claims 1-35 were all directed to a thermal transfer apparatus of broad utility, whereas newly submitted claims 36-68 are all directed to a method of processing biopharmaceuticals forming thermal bridges in the biopharmaceutical materials.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 36-68 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The amendment filed on April 18, 2000 (by certificate of mailing dated April 13, 2000) canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because they are drawn to a method of processing biopharmaceuticals (Invention II, below) not to an apparatus for thermal transfer (Invention I, below).

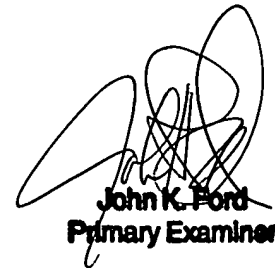
Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus can be used to practice many materially different processes such as heating soup or milk or cooling

Art Unit: 3743

orange juice (with or without forming ice bridges). The apparatus can be used to melt or solidify wax.

This case has had three office actions on the merits. Switching inventions at this late stage of prosecution is not in the interests of an orderly and proper examination. The Examiner would suggest filing a CPA application if Applicants wish to explore the patentability of method of use claims.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.


John K. Ford
Primary Examiner